

**AMENDED AND RESTATED  
JOINT PUBLIC AGENCY AGREEMENT  
OF THE  
WEST HAYMARKET JOINT PUBLIC AGENCY**

This AMENDED AND RESTATED JOINT PUBLIC AGENCY AGREEMENT (the "Amended Agreement"), is entered into as of \_\_\_\_\_, between THE CITY OF LINCOLN, NEBRASKA (the "City"), and THE BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA (the "University").

**RECITALS**

1. The University is a public body corporate duly created and existing under the laws of the State of Nebraska.
2. The City is duly organized and validly existing as a city of the primary class and political subdivision of the State pursuant to Chapter 15, Reissue Revised Statutes of Nebraska, as amended, and its home rule charter (the "**Charter**").
3. The City has determined that it is necessary, desirable, advisable and in the best interest of the City and its residents to (a) construct, equip, furnish and finance public facilities in the West Haymarket area of the City including but not limited to a sports/entertainment arena (the "**Arena**"), roads, streets, sidewalks, pedestrian overpass, public plaza space, sanitary sewer mains, water mains, electric transmission lines, drainage systems, flood control, parking garages and surface parking lots (the "**West Haymarket Facilities**"), and (b) to acquire land and to relocate existing businesses, to undertake environmental remediation and site preparation as necessary and appropriate for the construction, equipping, furnishing and financing of the West Haymarket Facilities (together, the "**Project**")
4. The University has determined that if the sports/entertainment arena and supporting parking and infrastructure is built, it is in the best interest of the University to relocate the home games of the University of Nebraska - Lincoln's men's and women's basketball teams from the University's Bob Devaney Sports Center to the arena.
5. The University and the City (collectively, the "**Participants**") desire to make the most efficient use of their taxing authority and other powers and to cooperate with each other and other governmental units on a basis of mutual advantage and to thereby provide services and facilities in a manner and pursuant to a form of governmental organization that will best account with the geographic, economic, population, and other factors influencing the needs and development of both the University and the City.
6. The Participants have determined that to achieve the objectives set forth above, it is necessary, desirable, advisable and in the best interest of the Participants that a joint public agency be formed by the Participants pursuant to the Joint Public Agency Act (Chapter 13, Article 25, Reissue Revised Statutes of Nebraska, as amended, the "**Act**").

7. The Participants have passed resolutions after published notice as required by the Act determining that it is necessary, desirable, advisable and in the best interest of the Participants that they form a joint public agency pursuant to the Act to finance the Project through bonds issued by such agency.

NOW THEREFORE, in consideration of the premises and covenants contained herein, the Participants agree as follows:

## ARTICLE I

### CREATION OF THE JOINT PUBLIC AGENCY

Pursuant to the Act, the Participants hereby create a joint public agency which shall be named the West Haymarket Joint Public Agency (the “**Agency**”) and which shall constitute a separate political subdivision and a public body corporate and politic of the State of Nebraska as provided by the Act. The Agency shall be subject to control by the Participants in accordance with the terms hereof. The governing body of each Participant has passed a resolution after published notice of the same as required by the JPA Act determining that a need for the Agency exists. A certified copy of each approving resolution shall be kept on file by the Agency at the City Clerk’s office located at 555 South 10th Street, Lincoln, Nebraska, 68508. The governing body of the Agency (the “**Board**”) shall submit the statement required by Section 13-2510, Reissue Revised Statutes of Nebraska, as amended, to the Secretary of State. The Agency’s existence shall commence upon the issuance of a certificate of creation by the Secretary of State as provided in Section 13-2511, Reissue Revised Statutes of Nebraska, as amended.

## ARTICLE II

### PURPOSES

The purposes of the Agency are as follows:

(a) To make the most efficient use of the taxing authority and other powers of the Participants and to cooperate with each other and other governmental units on a basis of mutual advantage and to thereby provide services and facilities in a manner and pursuant to a form of governmental organization that will best account with the geographic, economic, population, and other factors influencing the needs and development of the Participants.

(b) To exercise any power, privilege or authority to facilitate land acquisition, relocation of existing businesses, environmental remediation, site preparation and the construction, equipping, furnishing and financing public facilities, including but not limited to a sports/entertainment arena, roads, streets, sidewalks, pedestrian overpass public plaza space, sanitary sewer mains, water mains, electric transmission lines, drainage systems, flood control, parking garages and surface parking lots and any other capital improvements or other projects

pertaining to the redevelopment of the West Haymarket Redevelopment Area as shall be determined by the Board to be necessary, desirable, advisable or in the best interests of the Participants in the manner and as provided for by the Act. The West Haymarket Redevelopment Area is bounded roughly as depicted in the attached diagram (Exhibit A) and shall include any interests in property belonging to or acquired by the Agency for purposes of the Project including both permanent and temporary interests, licenses and rights of entry inclusive of all public right of way and approaches within design-appropriate distances of intersections for turning lanes and other appropriate features and amenities.

(c) To issue bonds to finance the West Haymarket Facilities, and to levy a tax as provided by the Act and this Agreement to pay the principal or redemption price of and interest on such bonds, when and as the same shall become due, to own the Arena and Parking Garages for so long as any Agency Bonds (hereinafter defined) are outstanding, to enter into a lease with the City to operate the Arena and Parking Garages for so long as any Agency Bonds are outstanding and to convey the Arena and Parking Garages to the City at such time as no Agency Bonds are outstanding.

(d) To sell, lease or otherwise dispose of excess land not needed for the West Haymarket Facilities to the City, University or private entities for redevelopment of the City's West Haymarket Redevelopment Area and, in particular, a proposed mixed use redevelopment project consisting of a multi-story, 200-250 room hotel, including some first floor rental space and one or more buildings containing approximately 100,000 square feet of residential space, 100,000 square feet of office space, and 100,000 square feet of retail space.

### ARTICLE III

#### ORGANIZATION

**Section 301. Governing Body.** The Board of the Agency shall consist of the following representatives:

1. Mayor of the City.
2. The member of the Board of Regents of the University of Nebraska from District No. 1.
3. A member of the City Council of the City appointed by the Mayor.

**Section 302. Term of Office.** Unless otherwise disqualified by the provisions of the Act, and except as provided herein or any amendment hereto, each representative shall serve for so long as such representative holds the position set forth in **Section 301**, or, in the case of the member of the City Council, until a successor is appointed by the Mayor.

**Section 303. Voting.** Unless the Board unanimously adopts different rules relating to voting by representatives, each representative shall have one vote on matters before the Board. Except as may otherwise be provided herein, or in any agreement to which the Agency is a party,

all actions of the Agency may be taken with the concurrence of a majority of the representatives entitled to vote. All actions of the Agency related to the Arena (as opposed to the West Haymarket Facilities as a whole) may only be taken by a unanimous vote of all the representatives entitled to vote.

**Section 304. Rules of Governance.** The Board shall adopt rules of governance that will include at a minimum, the following:

(a) ***Quorum.*** A majority of the representatives shall constitute a quorum for the transaction of any Agency business, except as provided in **Section 303** above.

(b) ***Officers.*** The Board shall elect a chair and vice-chair from among the representatives. The Board shall elect a secretary as provided in Section 13-2516 of the Act and appoint a treasurer who each shall serve at the pleasure of the Board and until their respective successors shall be appointed or elected as the case may be.

**Section 305. Meetings and Notice.** Meetings of the Board may be called by the chair or any two representatives. Written notice of the meeting and agenda shall be provided to each representative at least seven days prior to each such meeting. Courtesy copies may be provided to the City Clerk and the University of Nebraska – Lincoln Chancellor.

The Board shall also give public notice of the meeting pursuant to Section 84-1411, Reissue Revised Statutes of Nebraska, as amended. Public notice shall be given by posting a notice of the meeting on the official bulletin board of the City in the County-City Building, 555 South 10th Street, Lincoln, Nebraska, under the heading of “PUBLIC NOTICE OF MEETING,” maintaining an agenda in the office of the City Clerk which shall be available for inspection by the public. All meetings shall be conducted in accordance with the Open Meetings Act (Chapter 84, Article 14, Reissue Revised Statutes of Nebraska, as amended).

**Section 306. Treasurer’s Bond.** In the event that there is no treasurer’s bond that expressly insures the Agency against loss resulting from the fraudulent, illegal, negligent, or otherwise wrongful or unauthorized acts or conduct by or on the part of any person authorized to sign checks, drafts, warrants, or other instruments in writing, there shall be procured and filed with the secretary of the Agency, together with the written authorization filed with the secretary, a surety bond, effective for protection against the loss, in such form and penal amount and with such corporate surety as shall be approved in writing by the signed endorsement thereon of any two officers of the Agency other than the treasurer.

## ARTICLE IV

### DURATION

The duration of the Agency shall be perpetual, commencing with the date of issuance of the certificate of creation, and shall continue in effect until terminated as provided in **Article XIII** hereof.



## ARTICLE V

### POWERS

The Agency shall have such powers as are allowed by the Act, and any amendments thereto including, but not limited to, the powers:

(a) to incur debts, liabilities, or obligations, including the borrowing of money and the issuance of bonds, secured or unsecured, pursuant to the Act;

(b) to borrow money or accept contributions, grants or other financial assistance from a public agency and to comply with such conditions and enter into such contracts, covenants, mortgages, trust indentures, leases or agreements as may be necessary, convenient or desirable;

(c) subject to any agreements with holders of outstanding bonds, to invest any funds held in reserve or sinking funds, or any funds not required for immediate disbursement, including the proceeds from the sale of any bonds, in such obligations, securities, and other investments as the Board shall deem proper;

(d) to contract with and compensate consultants for professional services including, but not limited to, architects, engineers, planners, lawyers, accountants, financial advisors and others found necessary or useful and convenient to the stated purposes of the Agency;

(e) to levy taxes upon the taxable property in the City of Lincoln, Nebraska pursuant to Sections 13-2507 and 77-3443, Reissue Revised Statutes of Nebraska, as amended, to the extent that the authority to levy taxes is expressly and specifically assigned and allocated to the Agency by a Participant herein. Such levy authority may be exercised by the Agency only to the extent the assigning Participant restricts the exercise of its own levy authority to the same degree and the levy authority allocated to the Agency is reported to the Property Tax Administrator; and

(f) to exercise any other powers which are deemed necessary and convenient to carry out the provisions of the Act.

## ARTICLE VI

### ISSUANCE OF BONDS

The Agency, by resolution of the Board, may from time to time issue bonds or other evidences of indebtedness (the “Agency Bonds”) payable exclusively from all or a portion of the revenue from one or more projects, from one or more revenue-producing contracts, including securities acquired from any person, or leases made by the Agency with any person, including any Participant, or from its revenue generally which may be additionally secured by a pledge of

any grant, subsidy, or contribution from any person or a pledge of any income or revenue, funds, or money of the Agency from any source whatsoever or a mortgage or security interest in any real or personal property, commodity, product, or service or interest therein.

The Agency may from time to time also issue bonds in such principal amounts as the Board shall determine to be necessary to provide sufficient funds to carry out any of the Agency's purposes and powers, including the establishment or increase of reserves, the payment of interest accrued during construction of a project and for such period thereafter as the Board may determine, and the payment of all other costs or expenses of the Agency incident to and necessary or convenient to carry out its purposes and powers.

Notwithstanding any other terms hereof to the contrary, the Agency shall not issue any bonds or other form of indebtedness without the question of whether the Agency should issue such bonds or indebtedness being first presented to, and approved by, the Mayor and Council of the City.

## **ARTICLE VII**

### **LEVY AUTHORITY**

Pursuant to the provisions of Section 13-2507:

(a) The City hereby irrevocably allocates and assigns to the Agency, for the period beginning June 1, 2010 and ending on the date upon which all of the Agency Bonds are no longer deemed to be outstanding and unpaid pursuant to the resolution or resolutions pursuant to which they are issued, its authority to cause the levy of taxes within the taxing district of the City, beginning in the year 2010 for collection in 2011, for the purpose of paying the costs of the West Haymarket Facilities pursuant to Section 15-202, Reissue Revised Statutes of Nebraska, as amended, in an amount which will be sufficient to pay the principal or redemption price of and interest on the Agency Bonds when and as the same become due (the "**Agency Bond Levy**"), solely for the purpose of paying the principal or redemption price of and interest on the Agency Bonds.

(b) The Agency Bond Levy shall be certified to The County of Lancaster, Nebraska as provided by law for levy and collection in such amounts, if any, as may be required to pay the principal or redemption price of and interest on the Agency Bonds as the same become due.

(c) All taxes collected under the Agency Bond Levy shall be collected as provided by law and shall be credited to the Agency as soon as practicable.

## **ARTICLE VIII**

### **EXPENSES**

All expenses of the Agency not payable from the proceeds of the Agency Bonds,

including without limitation, travel expenses, administrative costs, insurance and professional fees, shall be paid by the City and University as mutually agreed upon between the parties.

## **ARTICLE IX**

### **BUDGETING**

The Board shall prepare a budget based on a fiscal year coinciding with the fiscal year of the City for the operation of the Agency. The budget of the Agency shall be established as provided in the Nebraska Budget Act (Chapter 13, Article 5, Reissue Revised Statutes of Nebraska, as amended) and presented to the City Council prior to the Agency's levy certification. The Agency shall cause to be conducted annually an audit conducted by a private qualified auditing business. The resulting audit report shall be delivered to the Agency and the governing body of each Participant.

## **ARTICLE X**

### **BIENNIAL REPORT**

Commencing in 2011, and each odd-numbered year thereafter, the Agency shall deliver to the Secretary of State a biennial report on a form prescribed and furnished by the Secretary of State, such fee and any other information or requirements as may be specified in Section 13-2525, Reissue Revised Statutes of Nebraska, as amended.

## **ARTICLE XI**

### **NOT FOR PROFIT**

It is expressly understood that the Agency is a public body and is to be operated not for profit, and no profit, dividend or Agency asset shall inure to the benefit of any individual.

## **ARTICLE XII**

### **WITHDRAWAL**

If the governing body of a Participant adopts a resolution setting forth the determination that the need for the Agency no longer exists, the Participant shall be permitted to withdraw from participation in the Agency, but withdrawal shall not affect the obligations of the withdrawing Participant pursuant hereto or any other agreements with the Agency. Withdrawal shall not impair or adversely affect the levy of the Agency Levy or receipt of revenues for, or the payment of, any outstanding bonds or indebtedness or the interest thereon.

## **ARTICLE XIII**

### **DISSOLUTION**

The Agency shall not be dissolved so long as any Agency Bonds are outstanding under the instrument pursuant to which they were issued. Upon dissolution of the Agency, provided the City continues to have the responsibility for the West Haymarket Facilities, all interest in the land, capital improvements, personal property and all other assets of the Agency used in the operation of the West Haymarket Facilities financed by the Agency Bonds remaining in the Agency shall be transferred to the City.

## **ARTICLE XIV**

### **MANNER OF ACQUIRING AND HOLDING PROPERTY**

The Board may lease, purchase or acquire by any means, from a Participant or from any other source, such real and personal property as is required for the operation of the Agency and for carrying out the purposes hereof. The title to all such property, personal or real, needed for the West Haymarket Facilities shall be held in the name of the Agency for so long as any Agency Bonds shall remain outstanding. The Agency shall convey all of its interest in the West Haymarket Facilities to the City at such time as no Agency Bonds remain outstanding. The Agency shall comply with the applicable bidding procedures of the City. The City shall perform the functions of the purchasing agent designated therein.

All conveyances of real property owned or held in the name of the Agency shall be authorized by resolution of the Board and executed by the Chair.

## **ARTICLE XV**

### **AMENDMENT**

This Agreement may be amended in writing, signed by all the Participants; provided, however, no amendment may be made limiting the duty of the Agency or the Participants to levy and collect taxes for the payment of any Agency Bonds. Any amendment hereto must first be approved by resolution of the governing body of each Participant. The amended and restated Agreement shall be filed with the Nebraska Secretary of State.

## **ARTICLE XVI**

In exercising its authority and carrying out its duties and functions the Agency shall not discriminate against any employee, applicant for employment, contractor, potential

contractor, or any individual or entity on the basis of race, religion, color, sex, national origin, disability, age, marital status, or any other basis prohibited by law.

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ATTEST:

THE CITY OF LINCOLN, NEBRASKA

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Mayor

Approved as to Form and Legality:

\_\_\_\_\_  
City Attorney

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

\_\_\_\_\_  
Notary Public



ATTEST:

**THE BOARD OF REGENTS OF THE  
UNIVERSITY OF NEBRASKA**

Donald J. Burns  
Corporate Secretary

By: James B. Milliken  
James B. Milliken, President

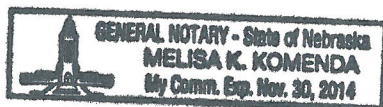
Approved as to Form and Legality:

Paul D. Peck  
General Counsel, University of Nebraska

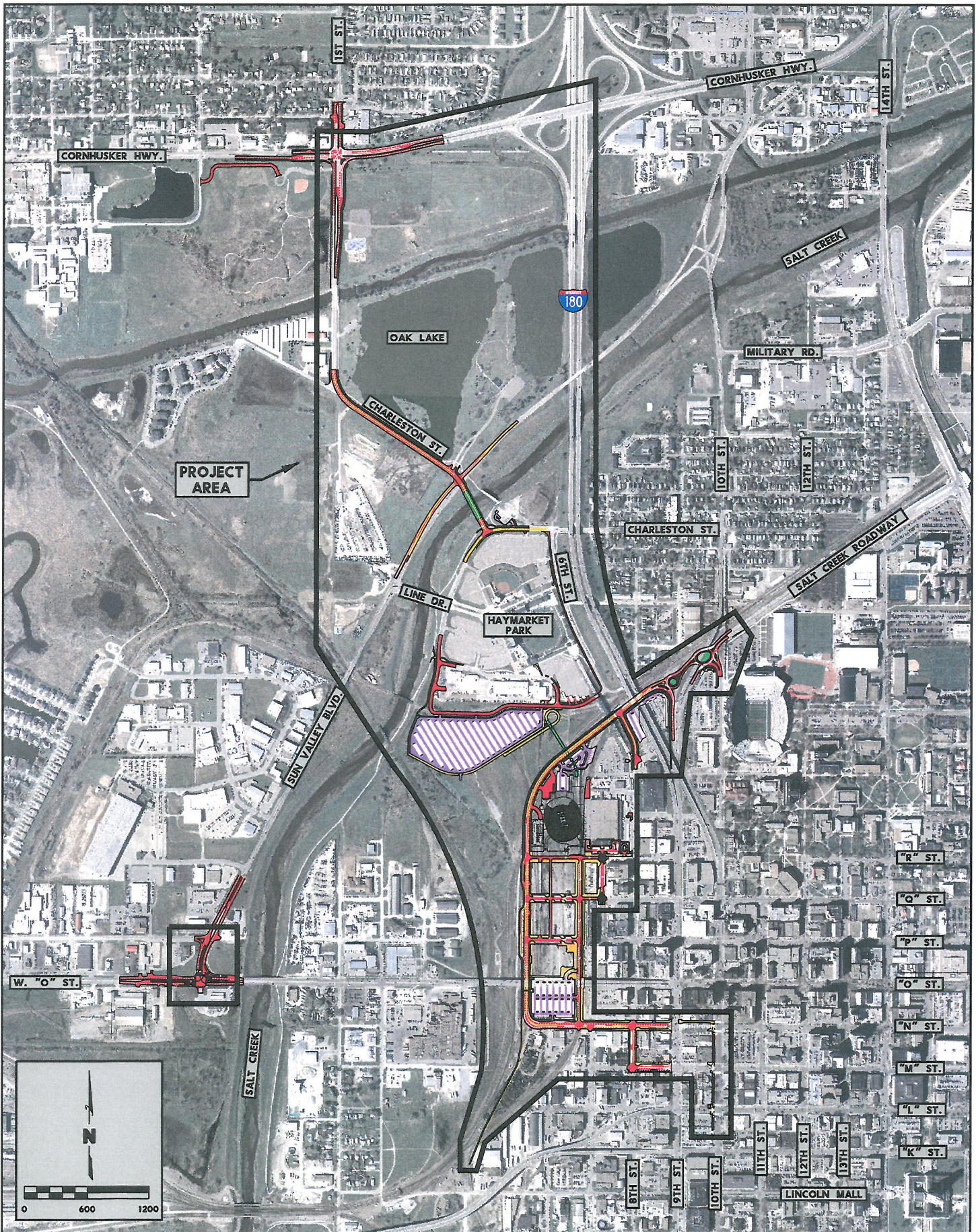
STATE OF NEBRASKA           )  
  ) ss.  
COUNTY OF LANCASTER    )

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of December, 2010, by James B. Milliken, President of the Board of Regents of the University of Nebraska, a public body corporate.

Melisa K. Komenda  
Notary Public







DATE: 11/5/2010  
 DSN: F:\PROJECTS\010-2431\Design\Exhibits\JPA Project Area\_8.5x11.dgn

PROJECT NO:	010-2431
DRAWN BY:	JJW
DATE:	11/5/2010

# WEST HAYMARKET JPA PROJECT AREA



EXHIBIT
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